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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation  
Against:

**BELINDA RUE MIRAGLIA, R.C.P.**  
8301 Mission Gorge Road, #274  
Santee, CA 92701

Respiratory Care Practitioner  
License No. 15278

Respondent.

Case No. D1-2007-055

OAH No.

**PETITION TO REVOKE  
PROBATION**

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 16, 1992, the Respiratory Care Board issued Respiratory Care Practitioner License No. 15278 to BELINDA RUE MIRAGLIA (Respondent). The license was in effect at all times relevant to the charges brought herein, and will expire on May 31, 2010, unless renewed.

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3. In a disciplinary action entitled "In the Matter of the Accusation Against Belinda Rue Miraglia," Case No. 1H-2007-055, the Respiratory Care Board issued a decision, effective October 2, 2008, in which Respondent's Respiratory Care License was revoked. However, the revocation was stayed and Respondent was placed on probation for a period of five (5) years under certain terms and conditions. A copy of that decision is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

## JURISDICTION

4. This Petition to Revoke Probation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 3710 of the Code states, in pertinent part: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

7. Section 3750 of the Code states, in pertinent part:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“ . . .

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

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1                   8.       California Code of Regulations (“CCR”), title 16, section 1399.370, states,  
2 in pertinent part:

3                   “For the purposes of denial, suspension, or revocation of a license, a crime  
4 or act shall be considered to be substantially related to the qualifications,  
5 functions or duties of a respiratory care practitioner, if it evidences present or  
6 potential unfitness of a licensee to perform the functions authorized by his or her  
7 license or in a manner inconsistent with the public health, safety, or welfare. Such  
8 crimes or acts shall include but not be limited to those involving the following:

9                   “(a) Violating or attempting to violate, directly or indirectly, or  
10 assisting or abetting the violation of or conspiring to violate any provision  
11 or term of the Act. . . .”

12                   **COST RECOVERY**

13                   9.       Section 3753.5, subdivision (a) of the Code states, in pertinent part:

14                   “In any order issued in resolution of a disciplinary proceeding before the  
15 board, the board or the administrative law judge may direct any practitioner or  
16 applicant found to have committed a violation or violations of law to pay to the  
17 board a sum not to exceed the costs of the investigation and prosecution of the  
18 case. . . .”

19                   10.     Section 3753.7 of the Code states:

20                   “For purposes of the Respiratory Care Practice Act, costs of prosecution  
21 shall include attorney general or other prosecuting attorney fees, expert witness  
22 fees, and other administrative, filing, and service fees.”

23                   11.     Section 3753.1 of the Code states, in pertinent part:

24                   “(a) An administrative disciplinary decision imposing terms of probation  
25 may include, among other things, a requirement that the licensee-probationer pay  
26 the monetary costs associated with monitoring the probation.”

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1 **FIRST CAUSE TO REVOKE PROBATION**

2 (Biological Fluid Testing)

3 12. At all times after the effective date of Respondent's probation, Condition 2  
4 stated:

5 "Respondent, at her expense, shall participate in random testing, including,  
6 but not limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer,  
7 hair follicle testing, or a drug screening program approved by the Board. Test  
8 costs range from \$21.00 to \$200.00 each. The length of time shall be for the  
9 entire probation period. The frequency and location of testing will be determined  
10 by the Board.

11 "At all times, Respondent shall fully cooperate with the Board or any of its  
12 representatives, and shall, when directed, submit to such tests and samples for the  
13 detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled  
14 substances.

15 "If Respondent is unable to provide a specimen in a reasonable amount of  
16 time from the request, while at the work site, Respondent understands that any  
17 Board representative may request from the supervisor, manager or director on  
18 duty to observe Respondent in a manner that does not interrupt or jeopardize  
19 patient care in any manner until such time Respondent provides a specimen  
20 acceptable to the Board.

21 "Failure to submit to testing or appear as requested by any Board  
22 representative for testing, as directed shall constitute a violation of probation and  
23 shall result in the filing of an accusation and/or a petition to revoke probation  
24 against Respondent's respiratory care practitioner license."

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1                   13.     Respondent's probation is subject to revocation because she failed to  
2 comply with Probation Condition 2, referenced above. The facts and circumstances regarding  
3 this violation are as follows: Respondent failed to provide urine specimens when she missed the  
4 test dates of December 23, 2008 and April 10, 2009.<sup>1</sup>

5                   **SECOND CAUSE TO REVOKE PROBATION**

6                   (Abstention From Use of Any and All Mood Altering Substances)

7                   14.     At all times after the effective date of Respondent's probation, Condition 3  
8 stated:

9                   "Respondent shall completely abstain from the possession or use of  
10 alcohol, any and all other mood altering drugs, substances and their associated  
11 paraphernalia, except when the drugs are lawfully prescribed by a licensed  
12 practitioner as part of a documented medical treatment.

13                  "Respondent shall execute a release authorizing the release of pharmacy  
14 and prescribing records as well as physical and mental health records.  
15 Respondent shall also provide information of treating physicians, counselors or  
16 any other treating professionals as requested by the Board.

17                  "Respondent shall ensure that she is not in the presence of or in the same  
18 physical location as individuals who are using illegal substances, even if  
19 Respondent is not personally ingesting the drug(s).

20                  "Any positive result that registers over the established laboratory cutoff  
21 level shall constitute a violation of probation and shall result in the filing of an  
22 accusation and/or a petition to revoke probation against Respondent's respiratory  
23 care practitioner license.

24                  "Respondent also understands and agrees that any positive result that registers  
25 over the established laboratory cutoff level shall be reported to each of Respondent's  
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27                  1. Respondent failed to test when selected on December 23, 2008 and April 10 2009, and  
28 instead, provided a specimen on December 26, 2008 and April 15, 2009, respectively.

employers.”

15. Respondent’s probation is subject to revocation because she failed to comply with Probation Condition 3, referenced above. The facts and circumstances regarding this violation are as follows:

A. On or about May 13, 2009, Respondent tested positive for Ethylglucuronide (ETG) at a level of 36,474.0 ng/ml, and also tested positive for Ethanol (alcohol) at a level of 220.0 mg/dl.

B. On or about June 22, 2009, Respondent tested positive for Ethylglucuronide (ETG) at a level of 849.0 ng/ml.

### **THIRD CAUSE TO REVOKE PROBATION**

(Probation Monitoring Program)

16. At all times after the effective date of Respondent’s probation, Condition 7 stated:

“Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

“Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

“Respondent is encouraged to contact the Board’s Probation Program at any time he has a question or concern regarding his terms and conditions of probation.

“Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent’s respiratory care practitioner license.

17. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 7, referenced above. The facts and circumstances regarding this violation are as follows: Respondent is required to call the drug testing program's automated telephone system on a daily basis. The failure to call is a violation of probation. Respondent missed the following call dates: April 12, 2009, April 15, 2009, and May 5, 2009.

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking the probation granted by the Respiratory Care Board of California in Case No. 1H-2007-055;

2. Revoking or suspending Respiratory Care License No.15278, issued to Belinda Rue Miraglia, R.C.P.;

3. Ordering Belinda Rue Miraglia, R.C.P. to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if probation is continued or extended, the costs of probation monitoring;

4. Taking such other and further action as deemed necessary and proper.

DATED: August 6, 2009.

Original signed by Liane Freels for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant